

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

VIOLET GOODWIN,

Plaintiff,

4:21-CV-417

vs.

ORDER

CITY OF OMAHA, et al.,

Defendants.

The plaintiff has filed a notice of appeal (filing 14) from the *pro se* supervising judge's order (filing 11) asking the Chief Judge to remove this case from the *pro se* docket and randomly reassign it. But a litigant seeking to appeal a judgment must either pay the required filing fees, see Fed. R. App. P. 3(e), or proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). The plaintiff has not proffered a filing fee, and is presumably relying on Fed. R. App. P. 24(a)(3), which provides that "[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization." *See* filing 5.

But § 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." *See also* Rule 24(a)(3)(A). An appellant demonstrates good faith by seeking appellate review of any issue that is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Ellis v. United States*, 356 U.S. 674, 674 (1958). An indigent appellant should be allowed to proceed in forma pauperis *unless* the issues raised are so frivolous that the appeal would be dismissed in the case of a non-indigent litigant. *Coppedge*, 369 U.S. at 447; *Ellis*, 356 U.S. at 675.

An appeal is frivolous where none of the legal points are arguable on their merits—when the result is obvious or the appellant's argument is wholly without merit. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Misischia v.*

*St. John's Mercy Health Sys.*, 457 F.3d 800, 806 (8th Cir. 2006). And while such a finding should be made only in extreme cases, it is proper when a party attempts to appeal from an order that is clearly not appealable. *See Cohen v. Curtis Publ'g Co.*, 333 F.2d 974, 978-79 (8th Cir. 1964).

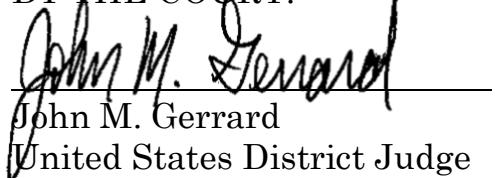
And an order reassigning a case to another district judge is not an appealable order. *See United States v. Johnson*, 790 F. App'x 557 (4th Cir. 2020); *Frazier v. City of Philadelphia*, 726 F. App'x 156, 157 (3d Cir. 2018); *O'Guin v. May*, 810 F.2d 202 (6th Cir. 1986). Nor, to the extent that the plaintiff has requested it, can this matter be appropriately certified for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 110-11 (2009). Accordingly, the plaintiff is attempting to appeal from a non-appealable order, so her appeal is frivolous.

IT IS ORDERED:

1. The plaintiff may not proceed *in forma pauperis* on appeal.
2. The Clerk of the Court shall provide the Clerk of the U.S. Court of Appeals for the Eighth Circuit with a copy of this order and follow its normal practice in cases such as this one.

Dated this 20th day of July, 2022.

BY THE COURT:

  
John M. Gerrard  
United States District Judge